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Competition DG

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State aids: Industrial restructuring

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Subject: Applicability of state aid rules in relation to the inclusion of the National Association of Municipalities in the Republic of Bulgaria as a concrete beneficiary under Operational Programme "Administrative Capacity" (AC OP) of Bulgaria 2007 – 2013.

Dear Madam,

We refer to your letter of 20 December 2011 concerning the above-mentioned subject.

In your letter you inform us about an operational programme (OP) called "Administrative Capacity" to be implemented in Bulgaria. The OP is co-funded by the European Social Fund.

The Managing Authority of the OP has included the National Association of Municipalities in the Republic of Bulgaria (NAMRB) as a concrete beneficiary of the OP and plans to provide a funding to the same entity for the delivery of training to local government officials and civil servants across all municipalities in the country. Your letter entails a description of the NAMRB which is a non-profit legal entity carrying out i.a. representation, defence and support of the local authorities.

Initially, it appears that your intention was that the NAMRB would not provide the trainings itself but would tender out all the training activities including the management of the project. However, further consultations with DG Employment, Social Affairs and Inclusion have revealed that the awarding of the entire project to external contractors might create problems related to the project's eligibility.

Therefore, your letter raises in substance the following questions:

- a. Would it be considered as state aid if the NAMRB is remunerated for the management of the project?
- b. Would it be considered as state aid if employees of the NAMRB are recruited and remunerated under the project to provide directly some of the training activities?
- c. Would it be considered as state aid if the whole implementation of the project (management and training activities) is entrusted to NAMRB employees?

On the basis of the information you provided in your letter, the competent departments of the Directorate General for Competition have come to the following preliminary assessment.

It appears that the nature of the NAMRB as a legal entity is twofold. On the one hand, it performs functions that are linked to the public administration, but on the other, it carries out an economic activity when organizing and providing training services. In this second case the association can be considered as an undertaking, competing with other training undertakings which could potentially provide the same services. The fact that you initially considered to tender out all the trainings to other training partners show that the trainings concerned are not as specific as they could only be provided by the NAMRB. Therefore, in the case of providing training services the NAMRB is subject to State aid rules as other undertakings.

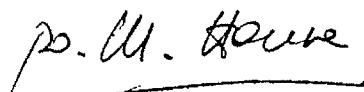
However, a state measure is considered as state aid under Article 107(1) TFEU only if it constitutes an economic advantage that the undertaking would not have received in the normal course of business. Therefore, funding received by the NAMRB does not constitute state aid if it represents the market price of the activity carried out.

In this respect, based on your evaluations on the cost-effectiveness of the activities funded by the OP it should not be a problem to establish the market price for the trainings concerned and set this as a threshold for the NAMRB project.

In conclusion, our response to questions a, b and c is that as long as the organisation of the trainings and the trainings activities themselves are remunerated to NAMRB at market prices, there is no state aid under Article 107(1) TFEU. Recourse made to NAMRB employees or other employees does not change this conclusion.

This position is not a definitive position of the Commission itself, but only a preliminary view of the services of DG Competition, based on the information available. This position is also not a guarantee whatsoever regarding the respect by the Managing Authority of AC OP of the legal public procurements rules.

Yours faithfully,



Joachim LÜCKING
Head of Unit

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